To adopt the language of Farwell L.J. in the case of *Hobbs* v. *Winchester Corporation supra*, the knowledge of the bookseller is not a matter which affects the public. It is the obscene books which he sells which poison their minds.

The appeal is dismissed.

Appeal dismissed.

Solicitors:—*Presgrave & Matthews.*

PACKER MOHAIDEEN v. K. ISMAIL GHANEY RAWTHER & CO. LTD.

[C.A. (Thomson C.J., Hill and Barakbah JJ.A.) April 16, 1963]

[K.L. — F.M. Civil Appeal No. 59 of 1962]

Practice and Procedure—Specially indorsed writ with statement of claim indorsed—Defendant making evasive denial—Defendant subsequently admitting claim —Judgment entered for plaintiff—R.S.C. 1957, O.19 r.19.

In this appeal the proceedings were commenced by specially indorsed writ and the statement of claim indorsed on the writ set out lengthy particulars of various transactions between the parties at the material time of their partnership showing a balance due by the defendant of $104,701.64. In his "statement of defence" drawn in contravention of O.19 r.19 the defendant denied that he was indebted to the plaintiff company in the sum of $104,701.64. However later in some independent proceedings before the judge in chambers the defendant's attorney admitted that he owed the plaintiffs about $105,000. That fact was brought to the notice of the Assistant Registrar when judgment was asked for in the present proceedings. The only other material before the Assistant Registrar was an affidavit which was in the same objectionable lines as the "statement of defence." The Assistant Registrar entered judgment for the plaintiffs.

Held: the Assistant Registrar had no option but to enter judgment as he did and the judge had no option but to dismiss the appeal when the matter was brought in before him. This court had no option but to dismiss the appeal with costs.

COURT OF APPEAL.

M. Edgar for the appellant.

M. Shanker for the respondents.

Thomson C.J. (delivering oral judgment): I am of the opinion that this appeal should be dismissed.

The proceedings were commenced by specially indorsed writ issued on 26th April, 1962, and the statement of claim which was indorsed on the writ set out lengthy particulars of various transactions between the parties at the material time of their partnership showing a balance due by the defendant of $104,701.64.

In effect no defence was filed.

What was filed was a paper which is headed "Statement of Defence" which is in contravention of Order 19 rule 19 of our Rules which is the same as the corresponding English rule and reads as follows:—

"When a party in any pleading denies an allegation of fact in the previous pleading of the opposite party, he must not do so evasively, but answer the point of substance. Thus, if it be alleged that he received a certain sum of money, it shall not be sufficient to deny that he received that particular amount, but he must deny that he received that sum or any part thereof, or else set out how much he received. And if an allegation is made with divers circumstances, it shall not be sufficient to deny it along with those circumstances."

The so-called defence in the present case is what can almost be described as an academic example of defence drawn in contravention of that rule. It says that the defendant denies he is indebted to the plaintiff company in the sum of $104,701.64. And that is all.

Later, in some independent proceedings before the Judge in Chambers, the defendant's attorney admitted that he owed the plaintiffs about $105,000 having previously denied that he owed $104,701.64. And that fact was brought to the notice of the Assistant Registrar when judgment was asked for in the present case. The only other material before the Assistant Registrar was an affidavit which is precisely on the same objectionable lines as the original "statement of defence":—

"I am instructed by the defendant herein to deny that he owes to the plaintiffs the sum of $104,701.64 for which judgment is now prayed."

In the circumstances I am of the opinion that the Assistant Registrar had no option but to enter judgment as he did and that the Judge had no option but to dismiss the appeal when the matter was brought in before him.

For myself I have no hesitation in saying I do not think this Court has any option but to dismiss the present appeal with costs.

Hill and **Barakbah JJ.A.** concurred.

Appeal dismissed.

Solicitors:—*Morris Edgar & Co.: Shearn, Delamore & Co.*

OVERSEA-CHINESE BANKING CORPORATION LTD. v. THE COMMISSIONER OF THE FEDERAL CAPITAL OF KUALA LUMPUR

[A.C.J. (Gill J.) April 29, 1963]

[K.L. — Originating Motion No. 8 of 1962]

Rating—Assessment—Principles of valuation.

Practice and Procedure—Appeal under s.44 Town Boards Enactment (Cap. 137)—O.59 r.13(1) & (2).

The appellant is the owner of a holding on Mountbatten Road, Kuala Lumpur, on which is erected a bank. For the year 1962, the Commissioner of the Federal

Capital, after hearing the appellant, assessed the annual value of the bank at $108,000. On an appeal by way of motion against the assessment, questions were raised as to whether the procedure was correct and whether the burden of proof of the rate and its reasonableness was on the rate payer or the Commissioner.

On the merits of the appeal the appellant called an experienced land valuer who was of the view that the value of $108,000 for the appellant's holding exceeds the estimated gross annual rent at which the said holding might reasonably be expected from year to year. On a comparative basis, the appellant's expert witness chose the Hongkong and Shanghai Bank in the Old Market Square which was valued at 60 cents per square foot per mensem, and which was in the process of being renovated. On a comparative basis, the expert said that a 5% return which amounted to $84,500 would be reasonable but suggested a valuation of $92,000. The respondent called his own expert who, on the comparative basis, said that banks whose valuations were less than 85 cents per square foot and which were situated on the same road as the appellant's bank were a more correct standard for comparison and on the contractor's basis, gave 6½% as a fair return on the capital.

Held: (1) since no procedure has been prescribed under the Town Boards Enactment and in view of O.59 r.13(1) the procedure adopted is the only procedure applicable, however, as regards the time within which such appeal should be brought, the provisions of section 44(ii) of the Town Boards Enactment must prevail over the provisions of O.59 r.13(2);

(2) in an appeal under section 44 of the Town Boards Enactment as in any other appeal from a lower court or any other tribunal, the burden of proof lies on the appellant. *Vermont* v. *Municipal Commissioners*(1) not followed;

(3) the powers of the Court are not confined to dealing merely with questions of law and it can vary the valuation and proceed to fix its own valuation on the evidence produced before it in a case where it is clear that the assessing authority in fixing its valuation acted on wrong principles;

(4) the respondent's expert adopted the right method of approach in comparing the appellant's premises with the premises of other banks in the same street.

Principles of valuation discussed.

Cases referred to:—

(1) *Vermont* v. *Municipal Commissioners* (1883) 1 Ky. 587.

(2) *The King* v. *Topham* (1810) 12 East 546; 104 E.R. 213.

(3) *The King* v. *Hull Dock Co.* (1824) 3 B. & C. 516; 107 E.R. 825.

(4) *Mersey Docks and Harbour Board* v. *Birkenhead Assessment Committee* [1901] A.C. 175, 183.

(5) *Port of London Authority* v. *Assessment Committee of Orsett Union* [1920] A.C. 273.

(6) *The Queen* v. *Grand Junction Railway Company* (1844) 4 Q.B. 18, 36; 104 E.R. 804, 811.

(7) *Cart-Wright* v. *Sculcoates Union* [1899] 1 Q.B. 667, 673.

(8) *Metropolitan Water-Board* v. *Chartse Assessment Committee* [1916] A.C. 337, 357.

(9) *London County Council* v. *Erith and West Ham* [1893] A.C. 562, 588.

(10) *Poplar Assessment Committee* v. *Roberts* [1922] 2 A.C. 93, 120.

(11) *Robinson Brothers (Brewers) Ltd.* v. *Houghton and Chester-le-Street Assessment Committee* [1937] 2 K.B. 445, 468.

ORIGINATING MOTION.

Yong Pung-How for the appellant.

R. H. V. Rintoul for the respondent.

Cur. Adv. Vult.

Gill J.: This application by way of originating motion is in reality an appeal under section 44 of the Town Boards Enactment (F.M.S. Cap. 137) against the valuation by the Commissioner of the Federal Capital of Kuala Lumpur of a holding within the Municipal Area for the purpose of assessment.

The applicant is the owner of the holding known as Lot No. 117, section 6, Town of Kuala Lumpur on which is erected a building known as 30 Mountbatten Road, Kuala Lumpur. A notice under sections 39 and 43 of the Enactment dated the 9th November, 1961 was served on the applicant stating that the Commissioner would proceed to revise the assessment list for the year next following on the 27th December, 1961, and that the holding in question had been included therein at an annual value of $120,000. The applicant duly lodged a written objection under section 40 of the Enactment for the revision of the assessment list. The objection was heard by the Commissioner on the 27th day of March, 1962 and by a letter dated the 2nd April, 1962 the applicant was informed that the Commissioner had decided to reduce the assessment on the said holding to the annual value of $108,000 with effect from the 1st day of March, 1962. The applicant now appeals against the assessment of the annual value of the holding at $108,000 on the grounds:—

(a) that the holding was valued on a wrong basis and was valued beyond its rateable value, and

(b) that the said annual value of $108,000 exceeds the estimated gross annual rent at which the said holding might reasonably be expected to let from year to year.

Before dealing with the appeal on merits I propose to deal with two points which were raised during the course of the proceedings, both of which relate to questions of procedure. The first point raised is whether the procedure followed here is the correct procedure for bringing an appeal under section 44 of the Town Boards Enactment. In my opinion the answer to that question is in the affirmative in view of the following provisions of Order 59 rule 13(1) of the Rules of the Supreme Court 1957:

"13(1) Wherever under any written law an appeal

lies from any decision of any person or body of persons to the High Court or to the Supreme Court such appeal shall be made to the High Court in the State where the decision was given by motion setting out the grounds of appeal, supported by affidavit and, if the Court so directs at the hearing, by oral evidence."

As far as I am aware, no procedure has been prescribed under the Town Boards Enactment as to the manner in which the appeal shall be brought. In the circumstances the procedure adopted here would appear to be the only procedure that is applicable. However, as regards the time within which such appeal shall be brought, the provisions of section 44(ii) of the Town Boards Enactment must prevail over the provisions of Order 59 rule 13(2) of the Rules of the Supreme Court, 1957.

The second point relates to the question of burden of proof. This point was taken by Mr. Yong Pung-How in the course of his address to the Court, after all the evidence at the hearing of the appeal had been recorded, on the authority of the old Straits Settlements case of *Vermont* v. *Municipal Commissioners*[1] in which Wood J. ruled that on an appeal by a rate-payer against the rate fixed by the Commissioners, the onus is on the Commissioners to prove both the rate and the reasonableness thereof and it is for them to do so before the appellant is called on to prove the unreasonableness thereof. The ruling in that case would appear to have been based upon the authority of *The King* v. *Topham*[2] and *The King* v. *Hull Dock Co.* [3]. I have looked at both these cases and I must say with respect that I can find nothing in either of those cases to support the very wide rule as to burden of proof enunciated in *Vermont* v. *Municipal Commissioners*. In *The King* v. *Topham* Lord Ellenborough C.J. said that when the question before the sessions is upon the quantum of the rate the officers making it must show to the justices some probable ground for the amount at which they charged the party in the rate. *The King* v. *Hull Dock Co.* was an appeal against a rate by the Hull Dock Co. The grounds of appeal were that some persons were improperly omitted and that a deduction ought to have been made from the sum at which the company were rated to the extent of the poor rate they were compellable to pay. Abbott C.J. said:

"Where property is rateable it is the duty of the officers to include it in the rate, and to take what means they can to ascertain its value. It is not for them to omit it altogether, and to cast upon the appellant, what is properly their duty, the burden of proving its value."

In my opinion, the rule stated in *Vermont* v. *Municipal Commissioners* has no application to an appeal such as the one which is before the Court. In an appeal under section 44 of the Town Boards Enactment, as in any other appeal from a lower court or any other tribunal, the burden of proof must lie on the appellant. Order 59 rule 13 requires an appellant in an appeal of this nature to set out his grounds of appeal supported by an affidavit. It is for him in the first place to justify his grounds, by oral evidence if necessary, before the respondent is called upon to justify his valuation of the property which he has made and against which valuation the appeal is brought. In any event, wherever the burden of proof may lie, it is clear that both parties to this appeal have had an opportunity to state their respective cases fully. Moreover, this question was raised after the appellant had accepted the onus and opened the case. He is therefore estopped from relying upon the question of burden of proof.

I pause here to consider another point which was raised by Mr. Rintoul on behalf of the respondent. It was argued by him that this Court should only interfere with the Commissioner's valuation if satisfied that he acted on wrong principles, and not concern itself with the quantum. In support of his argument he cited the following passage from the judgment of the Earl of Halsbury L.C. in *Mersey Docks and Harbour Board* v. *Birkenhead Assessment Committee*[4]:—

"What abstract proposition of law can be laid down to say that the recorder was wrong here? We have nothing to do with the question of amount. He may or may not have been wrong in the particular amount he has arrived at, but that is not a question of law. The question of law is whether upon this statement of fact you can say that he has included anything which he ought not to have included, or excluded something which he should have included."

He also cited in support of the same proposition the case of *Port of London Authority* v. *Assessment Committee of Orsett Union*[5], but, as Mr. Yong pointed out, this case was concerned with the sole question for the opinion of the Court as to whether the quarter sessions were right in holding that they were precluded by law from making any allowance for tenant's profits.

I agree with Mr. Rintoul that as a matter of general principle this Court in dealing with any appeal such as this should not initially concern itself with the quantum, but I do not think that the powers of the Court are confined to dealing merely with questions of law and are so restricted that it cannot vary the valuation and proceed to fix its own valuation on the evidence produced before it in a case where it is clear that the assessing authority in fixing its valuation acted on wrong principles. The fundamental principle is that an appeal to this Court is by way of rehearing. Such rehearing in the case of appeals from the subordinate courts is a rehearing on the record of proceedings in the subordinate court, but in an appeal from any other tribunal the rehearing may be on such evidence

as may be produced at the hearing of the appeal either by way of affidavits or oral evidence.

Coming now to the merits of the appeal, the evidence on behalf of the applicant at the hearing of this appeal consists of the affidavit of Mr. Lim Hock Siang dated the 30th July, 1962, which was filed in support of the Notice of Motion in these proceedings, and his oral evidence in court. Mr. Lim has had 39 years of experience of valuation of all types of property for rating purposes in Kuala Lumpur. He was Assessment Assistant with the Valuer-General, Federated Malay States, from January 1923 to September 1929, Assessment Officer and latterly Senior Assessment Officer of the Kuala Lumpur Sanitary Board from September 1929 to March 1948 and an Assessor in the Municipal Treasurer's Department of the former Kuala Lumpur Municipal Council from March 1948 to December 1955. He has been engaged in private practice as a First-class Appraiser licensed under the Appraisers Enactment (Cap. 80) for over six years since his retirement from the Municipal Council.

Mr. Lim stated in his affidavit that the annual value of $108,000 fixed by the Municipality for the appellant's holding exceeds the estimated gross annual rent at which the said holding might reasonably be expected to let from year to year. His main contention is that in assessing the annual value of the said holding the Commissioner should have had regard to the comparable annual values of the Eastern Bank premises in Ampang Street and the Embankment and the Hongkong & Shanghai Bank premises fronting Old Market Square. He further contends that the site of the said holding on Mountbatten Road is inferior as a banking site, although it would be a more valuable site for a departmental store since the prestige stores are concentrated on Mountbatten Road.

His evidence in court was that he inspected other properties in the neighbourhood having approximately the same ground floor area and used for the same purpose as the Oversea-Chinese Bank. These other banks, as he stated in his affidavit, are the Eastern Bank and the Hongkong & Shanghai Bank. Ultimately he chose the Hongkong & Shanghai Bank, which is valued at 60 cents per square foot per mensem, as the only bank as a suitable comparison. His conclusion is that the Hongkong & Shanghai Bank facing Old Market Square, which traditionally for over sixty years has been regarded as a banking centre of Kuala Lumpur, is the best criterion for valuing other bank premises in the vicinity. According to him the renovation of a building for conversion into banking premises should not have any effect on the annual value other than that the rating is based on usage. Under cross-examination Mr. Lim said that the other considerations which he took into account were comparisons with other similar buildings that have been assessed. He agreed that the main consideration is what a *bona fide* tenant is prepared to pay as rent and that a tenant would pay more for a building which has been modernized than for one which has not been modernized. He also admitted that the original valuation of the holding was $120,000 and that as a result of the hearing of the objection made by the applicant, at which he appeared in support of the objections, the valuation was reduced to $108,000. He further said that for the purpose of making comparisons he took into consideration the suitability of the holding for its particular user, its design, the constructional principles and details, accessibility, appearance and the age of the building. He had in mind the contractor's test, and in this connection his opinion is that a reasonable return on a first-class commercial building would be from 5 to 7 per cent. Bearing in mind that it cost the owners a total sum of $1,690,000 inclusive of renovations, a 5 per cent return would amount to $84,500, but he has suggested a valuation of $92,000. Without going into the details of his expert evidence, I would sum up the essence of his evidence in his own words to the effect that the corner stone of his valuation was the Hongkong Bank on the Embankment, although the Hongkong Bank was then about to undergo extensive renovations.

The evidence on behalf of the respondent in answer to this appeal consists of the evidence of Mr. Lee Yoke Sun, the Municipal Valuer of the Federal Capital of Kuala Lumpur, having been so appointed in February, 1961. Mr. Lee is a graduate of the University of London, having obtained the degree of Bachelor of Science in Estate Management. He is an Associate of the Royal Institution of Chartered Valuers of Great Britain, an Associate of the Chartered Auctioneers and Estate Agents Institute of Great Britain, an Associate of the Rating and Valuation Association of Great Britain, and a Member of the Institution of Surveyors of the Federation of Malaya. Obviously Mr. Lee has not had the same length of experience as his opponent, but he is admirably qualified by virtue of his theoretical knowledge.

Mr. Lee has filed two affidavits in these proceedings. In his first affidavit dated the 26th of July, 1962 he has stated that the holding in question is a sound solid brick building of four storeys presenting an impressive appearance. It was originally used as a luxury class departmental store on the ground and first floors and for office space on the second and third floors. After the purchase of the building in December

1959 by its present owners for a sum of $1,450,000, extensive improvements were made to the ground floor to convert it to its present user as banking premises. The first floor was also improved and some alterations were made to the second floor. He valued the ground floor on the basis of a rental of 85 cents per square foot per month, and in arriving at this figure he made reference to the agreed annual values of three banks in Mountbatten Road itself, in the vicinity of and not far from the Oversea-Chinese Bank premises, and three other banks in other areas of the town, two of which are valued at 85 cents per square foot and the third at 80 cents per square foot. The banks in Mountbatten Road itself are valued at an average of more than 85 cents per square foot. In his second affidavit dated the 3rd of August, 1962 he stated that consideration was given to various types of holdings within the Municipal area which could be more correctly used for ascertaining the correct valuation of the Oversea-Chinese Bank building. Due regard was also had to the site of the location, to the area of the site, the area of the floors of the building, the age, the construction, design and appearance of the building and the use of the building. Valuations of 37 other buildings in the Municipal area have been set out in a paper annexed to this affidavit.

In his evidence in Court Mr. Lee said that he visited three banks between the river and the Batu Road junction, being in the same sector as the Oversea-Chinese Bank, and that none of these banks was valued at less than 85 cents per square foot. The Oversea-Chinese Bank has been allowed a 10% reduction for multiple lettings, so that its true valuation is 76.5 cents per square foot as opposed to $1.25 per square foot for the Mercantile Bank at the corner of Batu Road junction, 73 cents for the Indian Overseas Bank and approximately 83 cents for the Indian Bank, no allowance having been given for multiple lettings in the case of these three banks. He agreed that rental for a smaller area would be slightly higher. It would be higher to the extent of as much as 10 cents per square foot only if one bank had a floor space of a thousand square feet and the other six to seven thousand square feet. According to him the Hongkong Bank could not be used for comparison because it was under reconstruction. The Eastern Bank was not suitable for comparison because it was purchased in 1954 and renovated in 1955, and it is reasonable to assume that a tenant would pay more for a recently modernized building. He disagreed with Mr. Lim's suggestion that Old Market Square was the banking centre of Kuala Lumpur because there are so many other banks which are situated away from this area. With regard to the contractor's test, he said that a minimum return on an outlay which a builder would expect would be 6½%. This was the return on which he used the contractor's test for the purpose of checking his valuation.

Mr. Lee was subjected to a lengthy cross-examination. To begin with he said that he placed no separate valuation on individual items of renovation and additions such as the strong room, but he maintained that as a whole they enhanced the value of the ground floor. His argument was that any change in the construction of a building must necessarily result in a change in the valuation. He conceded that if a building is converted for use as a bank he would value it as premises suitable for a bank, and that he was relying on the three banks in Mountbatten Road between the river and the Batu Road junction as suitable comparisons. He did this because they are in the same street and the same area. He further said that when he valued the applicant's bank in November 1961 the Hongkong Bank had not been evacuated. As regards a fair return for the purpose of the contractor's test, he took into account the bank lending rate which could possibly be 8%, but he took the fair return at approximately 6½%. In concluding his evidence under re-examination he said that the average valuation per square foot of the other three banks in Mountbatten Road was 93 cents as opposed to the valuation of the Oversea-Chinese Bank at 76.5 cents after making an allowance for multiple lettings. Thus, he said, the Oversea-Chinese Bank was being charged considerably less than the other three banks in that section of Mountbatten Road. The valuation of the Overseas Union Bank, on the other side of the river towards Pudu with a floor space of 4,070 square feet, was 85 cents per square foot with a 10% allowance for multiple lettings.

The main question, or perhaps the only question, to be decided in this appeal is whether the Commissioner has valued the applicant's holding on a wrong basis. What the Commissioner is required by law to do is to fix the annual value of the building. Annual value is defined in section 2 of the Town Boards Enactment as "the estimated gross annual value at which the holding might reasonably be expected to let from year to year, the landlord paying the expenses of repair, insurance, maintenance or upkeep and all public rates and taxes". In the words of Lord Denman C.J. in *The Queen* v. *Grand Junction Railway Company*[6], the assessing authority must consider

> "not dryly and only what would legally pass by a demise of it, but all the existing circumstances, whether permanent or temporary, wherever situated, however arising or secured, which would resonably influence the parties to a negotiation for a tenancy as to the amount of rent to be asked or given".

The problem is to ascertain what a tenant from year to year might reasonably be expected to give as rent and for the solution of that problem all that could reasonably affect the mind of the intending tenant ought to be considered (*per* Earl of Halsbury L.C. in *Cart-Wright* v. *Sculcoates Union*[7]. In *Metropolitan Water-Board* v. *Chertse Assessment Committee*[8] Lord Shaw of Dunfernline said that the one cardinal rule of all valuation is that the land and buildings should be taken account of just as they are, to the eye of a hypothetical tenant, with all their advantages, fitnesses, facilities and capacities. In *London County Council* v. *Erith and West Ham*[9] Lord Herschell L.C. said:

> "The tenant described by the statute has always been spoken of by the Court as 'the hypothetical tenant.' Whether the premises are in the occupation of the owner or not, the question to be answered is: Supposing they were vacant and to let, what rent might reasonably be expected to be obtained for them?"

It is clear that although the tenant is imaginary, conditions in which his rent is to be determined cannot be imaginary. They are the actual conditions affecting the hereditament at the time when the valuation is made (*per* Lord Buckmaster in *Poplar Assessment Committee* v. *Roberts*[10]).

In *Robinson Brothers (Brewers) Ltd.* v. *Houghton and Chester-le-Street Assessment Committee*[11] Scott L.J. summarized the fundamental and established principles of valuation as follows:—

1. The hereditament to be valued must always be the actual house or property for the occupation of which the occupier is to be rated, and it must be valued as it in fact is — *rebus sic stantibus.*
2. The actual rent at which a hereditament is let or the actual rents at which similar hereditaments in similar economic sites are let, so that they are truly comparable, is the best evidence.
3. Where no such direct evidence is available, resort must be had to indirect evidence from which it is possible to estimate the probable rent which the hypothetical tenant would pay.
4. Wherever resort to indirect sources for the purpose of assessing value is necessary, a skilled valuer must be employed.
5. In weighing up the evidence bearing upon value, it is the duty of the valuer to take into consideration every intrinsic quality and every intrinsic circumstance which tends to push the rental value up or down, just because it is relevant to the valuation and ought therefore to be cast into the scales of the balance before he looks to see the resultant figure on the dial at which the pointer finally rests.
6. A skilled valuer as a professional man must be left free to inform his mind of all relevant facts. It is only where it can be shown that he has had regard to some fact which is legally irrelevant or vice versa that his valuation is open to legal attack.
7. Wherever the direct test is not available, no fact which would in all the actual circumstances of the case tend to raise or lower the amount of rent likely to be given by probable competitors can be either irrelevant or inadmissible.
8. The rent to be ascertained should represent the figure at which the hypothetical landlord and tenant would come to terms as a result of bargaining for that hereditament, in the light of competition or its absence in both demand and supply, as a result of "the higgling of the market".
9. The true rent is often called "market value" which in its true sense means the highest value that can be obtained.
10. The objective being the real value of the actual hereditament, the enquiry is primarily economic and not legal. It is only legal in so far as logical relevance is the measure of legal admissibility.
11. On any enquiry into a valuation every factor, intrinsic or extrinsic, which tends to increase or decrease either demand or supply, is economically relevant and is, therefore, admissible evidence for the assessing authority or its valuer or the court on appeal to consider.

From the evidence given by the respective experts of the parties to this appeal, it would seem clear that they adopted the same method in arriving at their conclusions as to the valuation of the holding for the purpose of assessment. Both of them said that they were aware of the profits test and the contractor's test, which, they said, they took into consideration. Admittedly both of them have arrived at their valuations by comparing valuations of other banks. The applicant's valuer, however, has taken only the Hongkong Bank for purposes of his comparison. In fact, as he himself said, the corner stone of his valuation is the Hongkong Bank. As far as I can see, he can justify his reasoning on the grounds (a) that the bank has approximately the same ground floor area as the applicant's bank and (b) that it is situated in the banking area of Kuala Lumpur. He has completely ignored the Eastern Bank building

whose ground floor area is not very much smaller, which is much nearer the applicant's building and was renovated and modernized in 1955. The Hongkong Bank, on the other hand, had not been renovated on the material date. In my opinion the applicant's valuer was wrong in not taking into account several other recently modernized banks which are admittedly nearer the Hongkong Bank, even though their ground floor areas are considerably smaller. He is right in suggesting that in the case of smaller banks the rates would be higher, but he was wrong in totally disregarding them. I cannot accept his contention that Old Market Square is today the banking centre of Kuala Lumpur.

In my opinion the respondent's expert adopted the right method of approach in comparing the applicant's premises with the premises of other banks in Mountbatten Road itself. His contention that Mountbatten Road is one of the main arteries of Kuala Lumpur is unassailable, and there is no doubt that the applicant's bank is in a commanding position. To my mind the most suitable comparison of the applicant's bank is with the Mercantile Bank, now temporarily occupied by the Hongkong Bank, at the other end of a row of houses in Mountbatten Road. Both are corner buildings and, therefore, are well situated from the point of view of any prospective tenant. The Mercantile Bank at the other corner is admittedly a smaller bank with a ground floor area of only 1,164 square feet as opposed to the ground floor area of 5,067 square feet of the applicant's bank, but it is valued at $1.25 per square foot with no allowance for multiple lettings as opposed to the value of 85 cents per square foot of the applicant's bank with a 10% allowance for multiple lettings. There is, thus, a difference of nearly 50 cents per square foot in the valuation of the two banks. I am prepared to concede that the Eastern Bank which is not far from the applicant's bank should be taken into consideration. Indeed, in considering this appeal, the only thing that has troubled me is the valuation of the Eastern Bank at 70 cents per square foot with a 5% allowance for multiple lettings, but I am satisfied that, taking the entire floor space of the two bank buildings, the average valuation per square foot per annum of the Eastern Bank is in fact higher than the average valuation per square foot per annum of the applicant's bank. This is not surprising because the Eastern Bank building was bought with vacant possession whereas the applicant's bank was bought with vacant possession of the ground and first floors only.

Taking into consideration the whole of the evidence in this appeal, I am satisfied that the respondent's valuer applied the only test which could be suitably applied in this case, by equitable comparison of the applicant's bank with similar properties in similar occupation, with the necessary and appropriate adjustments. He allowed for all differences in character and position of the neighbouring premises, and he was quite right in taking into account the prominence of the site of the applicant's bank. It cannot be said that his valuation has been made otherwise than in accordance with recognised principles. In the circumstances I am in no position to say that he acted on the wrong basis. The appeal therefore is dismissed with costs.

Appeal dismissed.

Solicitors:—*Shook Lin & Bok; Shearn, Delamore & Co.*

SHAIK ALI v. SHAIK MOHAMED

[C.A. (Hill and Barakbah JJ.A., Ismail Khan J.) May 21, 1963]

[K.L. — F.M. Civil Application No. 1 of 1963]

Costs—Security for costs—Applicant resident out of jurisdiction—Whether stringent currency restrictions should be taken into account—Exercise of discretion.

The applicant asked the court to set aside an order requiring him to furnish security for costs made by the court in 1960 on the ground that owing to stringent currency restrictions in India such an order would result in further delay as it would inevitably take time to arrange for the transfer of money to this country. The respondent asked that the applicant should give security for costs before his application was dealt with on the ground that the applicant was resident in India and that he had no property or assets in Malaya. The respondent also affirmed in his affidavit that judgments of Malayan courts have not been satisfied, nor had an order for security of costs been complied with and he asked the court to take these circumstances into consideration.

Held: as the applicant is out of the jurisdiction and in view of the past history of the litigation, the court should require the applicant to give security for costs.

COURT OF APPEAL.

K. A. Menon for the applicant.

D. L. L. Pickard for the respondent.

Hill J.A. (delivering oral judgment) We considered this matter yesterday and I will now briefly state my views without attempting to go into the merits. At this stage they are not in issue.

The applicant is asking the court to reconsider some long standing litigation, which commenced in the early 1950s, and has now crossed the Indian Ocean to the High Court of India. He asks the court to make an order that an order made by this court in February 1960 be set aside.

The respondent asks that the applicant